

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDGAR HUBER

Appeal No. 98-2164
Application No. 08/587,931¹

ON BRIEF

Before MEISTER, STAAB, and CRAWFORD, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

Edgar Huber (the appellant) appeals from the final rejection of claims 11 and 13-15.² Claims 16 and 17, the only

¹ Application for patent filed January 17, 1996.

² Independent claim 11 has been amended subsequent to final rejection.

other claims present in the application, have been indicated as being allowable subject to the requirement that they be rewritten to include all the subject matter of the claims from which they depend.

We REVERSE.

The appellant's invention pertains to a drawer the nature of which is readily apparent from a perusal of independent claim 11. A copy of claim 11 may be found in the APPENDIX to the brief.

The reference relied on by the examiner is:

Lautenschläger	5,439,285	Aug. 8,
1995		

Claims 11 and 13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lautenschläger. According to the examiner:

Lautenschläger teaches a drawer, as illustrated in Figures 1-9, comprising a front panel (18), two drawer sides (20), and a rear panel (16). The two drawer sides (20) each have a lateral U-shaped profile with upper and lower horizontal bars (26,24) for the insertion of a drawer base (14) with a groove (30). Each drawer side (20) has a single projection (28a) which projects into the groove (30) of the drawer base. The front panel is joined to the two drawer sides by means of fixing devices which are conventional in the art. [Answer, page 3-4.]

Claims 14 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lautenschläger. The examiner is of the opinion that the particular shape of the projection is a matter of design choice.

With respect to the examiner's position that Lautenschläger teaches all the subject matter defined by independent claim 11, the appellant argues that Lautenschläger fails to teach (1) two drawer sides wherein each drawer side includes a horizontally extending flange with only a single projection extending upwardly from each horizontally extending flange, (2) a drawer base which includes a bottom surface with grooves formed therein at the lateral edges thereof, and (3) fixing devices that include a non-rigid structure to enable tilting of the side walls away from each other during the assembly of the drawer.

OPINION

Having carefully considered the respective positions advanced by the appellant in the brief and reply brief, and by the examiner in the answer, we are in substantial agreement

with the above-noted arguments (1) through (3) of the appellant.

With respect to the appellant's arguments (1) and (2), the answer states that:

Lautenschläger does disclose a lower horizontal flange (24) with a projection (28a)³ that extends upwardly. The orientation of the elements to be lateral or vertical is relative to the other structural elements in the invention. In this case, the examiner has interpreted the projection 28a to be situated in a vertical direction above from [sic] lower flange 24. [Answer, page 5; footnote added.]

From this explanation, it is difficult to determine exactly what the examiner intends. If, on the one hand, the examiner intends simply to "orient" Lautenschläger's drawer on its side so that projection 28a extends upwardly (e.g., with reference to Fig. 3, being in an orientation such that the web 20 rests on a horizontal surface) then the web 20 would become the flange (since the projection is claimed as extending from the flange) and edge 32 would become the bottom surface. The

³ The projections 28a identified by the examiner appear in the embodiments of Figs. 2-7 where there are a **plurality** of such projections on each side whereas independent claim 11 requires that the flange on each side have **only a single projection**. We observe, however, that in the embodiment of Fig. 1 Lautenschläger does provide only a single projection 28 on each side.

problem with this, however, is that (a) the projection on the other side of the drawer would now be on the top and extend downwardly (rather than upwardly as claimed), (b) the "bottom surface" 32 would have only a single groove formed therein (rather than **grooves** formed therein at the lateral edge portions as claimed), and (c) there would be no horizontal lip spaced from the flange so as to define a space therebetween as expressly claimed. If, on the other hand, the examiner by stating that "the examiner has interpreted the projection 28a to be situated in a vertical direction above from [sic] lower flange 24," is contending that, since the projection 28a is vertically spaced above lower flange 24 in the orientation depicted in Fig. 3, it can somehow be considered to "extend upwardly" from the lower flange 24, then we simply disagree. Terms in a claim should be construed in a manner consistent with the specification and construed as those skilled in the art would construe them (**see In re Bond**, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), **Specialty Composites v. Cabot Corp.**, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and **In re Sneed**, 710 F.2d 1544, 1548, 218 USPQ 385, 388

(Fed. Cir. 1983)). Here, consistent with the appellant's specification, we can think of no circumstances under which the artisan would construe the **horizontally extending** projections 28a depicted by Lautenschläger in Fig. 3 to "extend upwardly" merely because they are vertically spaced above the horizontally extending flanges 24. Moreover, with respect to the structure depicted by Lautenschläger in Fig. 3, the projections 28a extends from the vertical web 20 (rather than from the horizontal flange 24 as claimed) and the grooves 30 are in the edges 32 of the base 14 and face outwardly (rather than in the bottom surface of the base and facing downwardly as claimed).

As to the appellant's argument (3), there is absolutely nothing in Lautenschläger which would suggest a fixing device as set forth in the last four lines of claim 11 that includes

a non-rigid structure sufficient to enable, during assembly of said drawer and before mounting of said rear wall, tilting of said side walls away from each other without separation of said side walls from said front panel.

In fact, Lautenschläger discloses no specific fixing devices whatsoever, and instead merely states that the front may be joined to the sides by conventional known hardware (see col. 3,

lines 15-18). It totally unclear what the examiner's position is with respect to the above-noted limitation. We do observe, however, that the examiner in the paragraph bridging pages 4 and 5 of the answer notes that statements of intended use are insufficient to distinguish structure over the prior art. If the examiner is suggesting that the above-noted limitation is merely a statement of intended use which can be dismissed, then the examiner is simply wrong. Instead, this limitation defines a non-rigid structure in terms of a function that it must be **capable** of performing. *See, e.g., Rowe v. Dror*, 112 F.3d 473, 479-80, 42 USPQ2d 1550, 1554-55 (Fed. Cir. 1997); *In re Hallman*, 655 F.2d 212, 215, 210 USPQ 609, 611 (CCPA 1981); *In re Venezia*, 530 F.2d 956, 959, 189 USPQ 149, 151-52 (CCPA 1976)); *In re Pearson*, 494 F.2d 1399, 1403, 181 USPQ 641, 644 (CCPA 1974) and *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973).

In view of the above, the rejections of claims 11 and 13 under 35 U.S.C. § 102(e) and claims 14 and 15 under 35 U.S.C. § 103 are reversed.

REVERSED

JAMES M. MEISTER)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
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Application No. 08/587,931

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REVERSED

Prepared: December 6, 1999